

**KLESTADT WINTERS JURELLER  
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*Attorneys for the Debtor and Debtor-in-Possession*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

-----X  
In re : Chapter 11  
:  
HBL SNF, LLC, d/b/a EPIC REHABILITATION : (Subchapter V)  
AND NURSING AT WHITE PLAINS,<sup>1</sup> :  
:  
Debtor. : Case No. 21-22623 (SHL)  
-----X

**DECLARATION OF LIZER JOZEFOVIC IN SUPPORT OF THE DEBTOR'S REPLY  
TO THE OBJECTION OF WHITE PLAINS HEALTHCARE PROPERTIES I, LLC TO  
MOTION FOR ENTRY OF ORDER PURSUANT TO 11 U.S.C. §1189(b) EXTENDING  
TIME TO FILE SUBCHAPTER V PLAN OF REORGANIZATION**

Lizer Jozefovic declares as follows pursuant to 28 U.S.C. § 1746:

1. I am the Chief Executive Officer of HBL SNF, LLC, d/b/a Epic Rehabilitation and Nursing Center at White Plains (the "Debtor"). I submit this declaration in connection with the Debtor's Reply to The Objection of white Plains Healthcare Properties I, LLC to Motion for Entry of Order Pursuant to 11 U.S.C. § 1189(b) Extending Time to File Subchapter V Plan of Reorganization (the "Reply").<sup>2</sup>

2. Attached hereto as **Exhibit A** is a true and correct copy of an e-mail from counsel to the Landlord refusing the Debtor's request for mediation.

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<sup>1</sup> The Debtor's principal office is located at 120 Church Street, White Plains, New York 10601. The last four digits of its taxpayer identification number are 6045.

<sup>2</sup> Terms capitalized but not defined herein have the meanings ascribed to them in the Reply.


3. Attached hereto as **Exhibit B** is a true and correct copy of a letter from the Landlord, dated September 24, 2021, denying the Debtor's request to exercise its option to purchase the property subject to the Lease.

*[Remainder of this page intentionally left blank – Signature follows]*

I declare under penalty of perjury that, to the best of my knowledge and after reasonable inquiry,  
the foregoing is true and correct.

Dated: New York, New York

January 24, 2022



Lizer Jozefovic,  
Chief Executive Officer

**EXHIBIT A**

[REDACTED]

[REDACTED]

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**From:** Alfred E. Donnellan <[AED@ddw-law.com](mailto:AED@ddw-law.com)>  
**Sent:** Monday, July 26, 2021 11:34 AM  
**To:** John Giardino (NY) <[jgiardino@mrlp.com](mailto:jgiardino@mrlp.com)>  
**Cc:** Alex Barnett-Howell (NY) <[abarnett-howell@mrlp.com](mailto:abarnett-howell@mrlp.com)>  
**Subject:** RE: [EXTERNAL] HBL/White Plains Confidential Settlement Proposal

**CAUTION:** Email from external account

John,  
Your proposal has been reviewed and is rejected. If you have a proposal that would put the Tenant in compliance with the existing Lease, including the waivers of prior claims set forth therein, it will be considered. Our client will not participate in another renegotiation of the Lease. So, any mediation that would involve another round of re-trades on the terms of the Lease is not something we will participate in.

Alfred E Donnellan  
Managing Partner  
DelBello Donnellan Weingarten Wise & Wiederkehr, LLP  
One North Lexington Ave.  
White Plains, NY 10601  
Phone: 914-681-0200  
e-mail: [aed@ddw-law.com](mailto:aed@ddw-law.com)  
[www.ddw-law.com](http://www.ddw-law.com)

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We are required by IRS Circular 230 to inform you that any statements contained herein are not intended or written to be used, and cannot be used, by you or any other taxpayer, for the purpose of avoiding any penalties that may be imposed by Federal Tax Law.

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**From:** John Giardino (NY) <[jgiardino@mrlp.com](mailto:jgiardino@mrlp.com)>  
**Sent:** Friday, July 23, 2021 2:14 PM  
**To:** Alfred E. Donnellan <[AED@ddw-law.com](mailto:AED@ddw-law.com)>  
**Cc:** Alex Barnett-Howell (NY) <[abarnett-howell@mrlp.com](mailto:abarnett-howell@mrlp.com)>  
**Subject:** [EXTERNAL] HBL/White Plains Confidential Settlement Proposal

Dear Al,

As discussed, enclosed please find our proposal to settle a number of the issues in our pending matter. I look forward to discussing the same with you.

Enjoy the weekend,  
John

**John Giardino, Esq.**



**New York** | Los Angeles | Orange County | San Francisco | Chicago

800 Third Avenue, 24th Floor, New York, NY 10022

**T** 212.730.7700 **D** 212.659.2587 **F** 212.730.7725

**E** [jgiardino@mrlip.com](mailto:jgiardino@mrlip.com) [www.mrlip.com](http://www.mrlip.com)

**Bio** [vCard](#)

**EXHIBIT B**

## WHITE PLAINS HEALTH CARE PROPERTIES I, LLC

### C/O THE CONGRESS COMPANIES

West Peabody Executive Center  
2 Bourbon Street  
Peabody, MA 01960  
Phone: 978-535-6700  
Fax: 978-535-6701  
[inquire@congressconstruction.com](mailto:inquire@congressconstruction.com)

September 24, 2021

BY UPS Overnight Delivery, signature required  
BY EMAIL: [lizerj@watersedgeusa.com](mailto:lizerj@watersedgeusa.com)

HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520  
Attn: Lizer Josefovic

**RE: 116-120 Church Street, White Plains, New York ("the Leased Premises")  
TENANT LETTER OF SEPTEMBER 17, 2021.**

Lizer:

We are in receipt of your letter dated September 17, 2021, which attempts to exercise a non-existent "option" to purchase the Leased Premises. It is rejected in its entirety.

#### **Rejection of the September 17, 2021 letter:**

1. The Lease was terminated due to the Tenant's defaults thereunder on January 13, 2020 at 5:00 PM. We refer you to the Landlord's counsel, Alfred Donnellan's letter of January 7, 2020, attached herewith. The Tenant has no "option" rights under the Lease, since the Lease has long been terminated.
2. As set forth in the LOI dated November 20, 2019, para 6, g) Right of First Refusal and Option to Purchase, the Tenant's right of first refusal and option to purchase under the Lease were clearly suspended, pending payment in full of certain payments under the Lease, including the Security Deposits required under the Lease (as amended by the LOI), the working capital required by Section 7.7 of the Lease and *"the Tenant being in full compliance with the Lease"*. As you are aware, HBL never paid either the original lease Security Deposits nor the Security Deposits set forth in the LOI and never complied with the working capital requirements under Section 7.7 of the Lease. The Tenant is not currently, and was never, "in full compliance with the Lease".

#### **Tenant's duty to Indemnify the Landlord:**

1. In addition, as a result of HBL's blatant and ongoing Defaults under the Lease, (including the professional fees required to respond to this frivolous maneuver) continue to result in significant costs to the Landlord, which the Tenant is responsible to pay under Section 9.1, Tenant's indemnification, of the Lease. HBL's actions to date suggest that it is either unaware of, or in blatant disregard of this provision of the Lease. Be aware that these costs are inarguably the responsibility of the Tenant under the Lease, notwithstanding the Termination of the Lease, and must be paid forthwith.

#### **Amounts due to the Landlord by the Tenant:**

1. Due HBL's ongoing defaults, as of July 31, 2021, the Tenant is obligated under the Lease to pay to White Plains Health Care Properties the total sum of **\$111,420,213.50**, including late and default

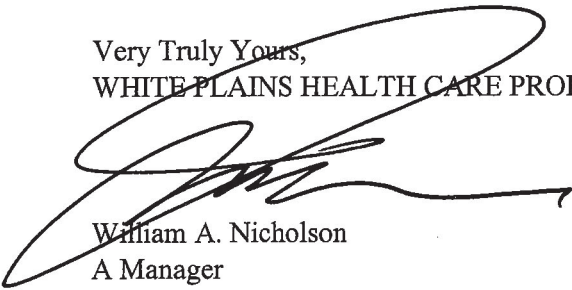


amounts due thereunder, as set forth in the attached accounting, which was included in the Landlord's Motion for Summary Judgment.

(i) Rent and Holdover Rent:	\$20,574,253.03
(ii) Real estate taxes:	\$2,621.94
(iii) Municipal and utility deposits:	\$35,921.44
(iv) Interest rate damages for failure to close by April 1, 2020 as required by the letter of intent,	\$3,181,612.87
(v) Costs and professional fees (including certain WIP):	\$1,524,000.00
(vi) Lender default and late charges,	\$3,732,034.22
(vii) Accelerated rent	\$82,369,770.00

2. There can be no credible argument to even remotely suggest that the Tenant is not in **Default** under the Lease. **Accordingly, the Landlord hereby demands immediate payment of \$111,420,213.50, (as of the above 7/30/21 accounting) plus further ongoing amounts as set forth under the Lease) from the Tenant HBL, and from its Guarantors Lizer Josefovich and Mark Neuman.**
3. The Landlord reserves all other rights and remedies at law or in equity as against the Tenant, and against all Guarantors of the Lease, and the holders of any funds allocated or designated for Landlord's benefit.
4. Notice is hereby given that the Landlord has incurred significant losses and expects to continue to incur significant losses in connection with the Tenant's Defaults as defined the Lease and the Guarantees. Pursuant to your obligations under the Lease and Guaranty, you (HBL and its Guarantors) are hereby placed on notice that the obligations thereunder are now due, owing and continue to accrue. As a result of these obligations, you shall not transfer any assets or otherwise attempt to conceal any assets from White Plains Health Care Properties I LLC. White Plains Health Care Properties I LLC expressly reserves all rights with respect to this matter.

Very Truly Yours,  
WHITE PLAINS HEALTH CARE PROPERTIES I, LLC



William A. Nicholson  
A Manager

CC:

By Email (lizerj@watersedgeusa.com) & BY UPS Overnight Delivery, signature required  
Lizer Josefovich, Guarantor, Individually  
53 Mariner Way  
Monsey, NY 10952

By Email ([jgiardino@mrllp.com](mailto:jgiardino@mrllp.com)) & BY UPS Overnight Delivery, signature required  
John Giardino, Esq.  
Michelman & Robinson, LLP  
800 Third Avenue, 24<sup>th</sup> Floor  
New York, NY 10022

By Email ([markn@epicmgt.com](mailto:markn@epicmgt.com)) & BY UPS Overnight Delivery, signature required  
Mark Neuman, Guarantor, Individually  
22 Lyncrest Drive  
Monsey, NY 10952

By UPS Overnight Delivery, signature required  
Gerald Neuman, Individually  
c/o HBL SNF, LLC  
1280 Albany Post Road  
Croton-on-Hudson, NY 10520

By Email:  
Robert Spolzino, Esq.  
Howard Fensterman, Esq.  
Alfred E. Donnellan, Esq.  
Edward Tabor

# Exhibit 24

HARVEY KALP REAL ESTATE PROPERTIES I, LLC - HBL-SNF LLC				RECEIVED NYSCEF: 08/19/2021			
07/15/21							
AMOUNTS DUE UNDER LEASE & LOI							
Note: calculated through 7/31/2021							
Note: Excludes Present Value of Accelerated Lease							
AMOUNTS PAYABLE							
	Reference	Amount Due	Late Charges Per Lease Para 3.2 (c): 5.00%	Overdue Rate Per Lease Sect. 9.1 (b): Prime Rate + 5.00%	TOTALS		
Rent:							
Rent	Balance unpaid at commencement	\$ 10,839.79	\$ 202,980.59	\$ 17,803.55	\$ 231,623.93		
Holdover Rent	Feb 2020- July 2021	\$ 18,219,474.00	\$ 910,973.70	\$ 1,212,181.40	\$ 20,342,629.10		
Subtotal Rent		\$ 18,230,313.79	\$ 1,113,954.29	\$ 1,229,984.96	\$ 20,574,253.04		
RE Taxes							
RE Taxes for the period 1/1/20 - 6/30/20	Need proof of Payments	\$ -	\$ -	\$ 2,621.94	\$ 2,621.94		
Subtotal RE Taxes		\$ -	\$ -	\$ 2,621.94	\$ 2,621.94		
Deposits, Other							
Utility Deposits	Lease Section 4.1	\$ 19,181.10		\$ 3,560.33	\$ 22,741.43		
Municipal Deposits	Lease Section 5.2	\$ 6,700.00		\$ 1,243.63	\$ 7,943.63		
2020 Fire Inspection Fee	Lease Sect. 4.1	\$ 1,443.75					
Con Edison Electric Invoice	Lease Sect. 4.1	\$ 2,972.84		\$ 551.81	\$ 3,524.65		
Subtotal Deposits, Other		\$ 30,297.69	\$ -	\$ 5,623.75	\$ 35,921.44		
Interest Rate Damages for Failure to Close by 04/30/20 per LOI							
Interest Rate Damages First Mortgage Loan	Lease Article IX Indemnification	\$ 1,916,160.82	\$ -		\$ 1,916,160.82		
Interest Rate Damages Mezz Loan	Lease Article IX Indemnification	\$ 1,265,452.05	\$ -	\$ -	\$ 1,265,452.05		
Subtotal Interest Rate Damages		\$ 3,181,612.87	\$ -	\$ -	\$ 3,181,612.87		
Landlord Professional Fees & Transaction Costs (Est)							
Landlord Legal, Professional, Transactional	Lease Article IX Indemnification	\$ 1,524,000.00			\$ 1,524,000.00		
Subtotal Professional & Transactional		\$ 1,524,000.00	\$ -	\$ -	\$ 1,524,000.00		
Lender Default and Late Charges							
Lender Legal and Professional	Lease Article IX Indemnification	\$ 26,727.58	\$ -	\$ -	\$ 26,727.58		
Lender Default Interest - SBLI	Lease Article IX Indemnification	\$ 2,927,606.59	\$ -	\$ -	\$ 2,927,606.59		
Lender Late Charges - SBLI	Lease Article IX Indemnification	\$ 231,124.71			\$ 231,124.71		
Lender Late Charges - BA	Lease Article IX Indemnification	\$ 451,575.34			\$ 451,575.34		
Lender Extension Fees - BA (2 Ext @ .050%)	Lease Article IX Indemnification	\$ 95,000.00			\$ 95,000.00		
Subtotal Lender Legal, Default and Late Charges		\$ 3,732,034.22	\$ -	\$ -	\$ 3,732,034.22		
TOTALS		\$ 26,698,258.57	\$ 1,113,954.29	\$ 1,238,230.65	\$ 29,050,443.51		



RECEIVED NYSCF 08/19/2020									
HBL SNF Default Costs due to Landlord									
N 6/13/2020 DOC NO 213									
LATE CHARGE PER LEASE									
PARA 3.2 c									
Overdue Rate Section Per									
Lease 9.1 (b)									
Indemnification									
Lease Article 9									
TOTAL Charges									
Amts Due									
Amount Due									
Due Date									
Amount Paid									
Date Paid									
Days Late									
Days > 5									
Late									
5% Late Charge									
Per Lease 3.2 (c)									
Prime Rate									
+ 5.00%									
Overdue Charges									
Rent									
10,839.79									
9/30/2019									
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2021

NYSCF DOC NO 213										RECEIVED NYSCF		08/19/2023	
										TOTAL Charges	Amts Due		
\$	38,500,000.00	3/1/2021 \$	-	30	25 \$	4.11%	\$ 130,056.16			\$ 130,056.16			
\$	38,500,000.00	4/1/2021 \$	-	29	24 \$	4.11%	\$ 125,720.96			\$ 125,720.96			
\$	38,500,000.00	5/1/2021 \$	-	30	25 \$	4.11%	\$ 130,056.16			\$ 130,056.16			
\$	38,500,000.00	6/1/2021 \$	-	29	24 \$	4.11%	\$ 125,720.96			\$ 125,720.96			
\$	38,500,000.00	7/1/2021 \$	-	30	25 \$	4.11%	\$ 130,056.16			\$ 130,056.16			
\$	-						\$ 1,916,160.82			\$ 1,916,160.82	-		
\$	SUBTOTAL SBIL												
Interest Rate Damages Mezz Loan													



NYSCF DOC NO 213										RECEIVED NYSCF 08/19/2023									
Indemnification - Professional Fees Professional Fees										LATE CHARGE PER LEASE PARA 3.2 c		Overdue Rate Section Per Lease 9.1 (b)		Indemnification Lease Article 9		TOTAL Charges		Amts Due	
AFF		Through July 26, 2021																	
		To Complete																	
		Total																	
DeBello		Through June 20, 2021																	
		To Complete																	
		Total																	
Congress		Through May 2020 incl W/P																	
		To Complete																	
		Total																	
Abatte		Through May 2020																	
		To Complete																	
		Total																	
Povol		Through May 2020																	
		To Complete																	
		Total																	
To Complete																			
TOTAL TRANSACTIONAL (EST)																			
Lender Charges																			
SBL Legal		James Wire, BA Counsel, DLA Piper																	
		To Complete																	
		Total Lender Legal																	
SBL Default Interest		Through 06/01/21																	
		June 2021																	
		July 2021																	
		TOT																	
SBL Late Payments		Through 06/01/21 Statement																	
		June 2021																	
		July 2021																	
		TOT																	
BA Default Interest																			
		SBL Default Rate (Maturity)	8/17/2020	7/30/2021	347	\$ 9,500,000.00	5.00%												
		SBL Extension Fees	8/17/2020			\$ 9,500,000.00	0.50%												
			8/17/2021			\$ 9,500,000.00	0.50%												
		TOT																	



**AMOUNTS DUE**

	<u>Per Affidavitt</u>	<u>Per Schedules</u>	<u>Variance</u>
Holdover rent and rent		\$ 18,219,474.00	
		2,123,155.10	
		10,839.79	
		220,784.14	
	\$ 20,574,253.03	20,574,253.03	-
Real estate taxes	2,621.94	2,621.94	-
Deposits and Late Charges	35,921.44	35,921.44	-
Default interest	3,181,612.87	3,181,612.87	-
Professional fees	1,524,000.00	1,524,000.00	-
Lender defaulta and late charges	3,732,034.22	3,732,034.22	-
Accelerated rent	82,369,770.00	82,369,770.00	-
	<u>\$ 111,420,213.50</u>	<u>\$ 111,420,213.50</u>	<u>T</u>